

#19-04

Town of Sandwich
THE OLDEST TOWN ON CAPE COD



Board of Appeals

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SPECIAL PERMIT CERTIFICATE OF APPROVAL/DENIAL

Petition # 19-04
Current Property Owner(s): Heritage Plantation of Sandwich, Inc.
Applicant: The Adventure Park at Heritage Museums and Gardens, LLC
Property Address: 0 Pocasset Road & 0 Shawme Road, Sandwich
Map, Parcel 37, 1&2
Certificate of Title: Book 3184, Page 85 & Book 8687, Page 252

On June 25, 2019 the Zoning Board of Appeals voted to grant a Special Permit under Section 1330 & 4150 of the Sandwich Protective Zoning By-Laws for the purpose of operating a ropes course as a small scale outdoor community recreation facility on property located at 0 Pocasset Road and 0 Shawme Road, Sandwich as shown on Assessor's Map 37, Parcels 1&2.

The Board of Appeals certifies that the decision attached hereto is a true and correct copy of its decision to approve a special permit and that copies of said decision, and of all plans referred to in the decision, have been filed with the Board of Appeals and the Town Clerk.

The Board of Appeals also calls to the attention of the owner or applicant that General Laws, Chapter 40A, Section 11 provides that no special permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the town clerk, that twenty days have elapsed after the decision has been filed in the office of the town clerk and no appeal has been filed or that, if such appeal has been filed, that it has been dismissed or denied, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The owner or applicant shall pay the fee for such recording or registering. A copy of that registered decision shall be returned to the Planning & Development office as proof of filing.

Any person aggrieved by this decision may appeal to the Superior Court or Land Court as in Section 17 of Chapter 40A, M.G.L. by filing a NOTICE OF ACTION AND COMPLAINT with the Town Clerk within twenty (20) days of the date of filing of this decision.


Board of Appeals Member

TOWN CLERK
TOWN OF SANDWICH

6/26/2019

Date

JUN 27 2019

10 H 00 M 4 M
RECEIVED & RECORDED

PROCEDURAL HISTORY

1. On April 23, 2019 a special permit application was filed under sections 1330 & 4150 for the purpose of operating a ropes course as a small scale outdoor recreation facility for property located at 0 Pocasset Road and 0 Shawme Road, Sandwich as shown on Assessor's Map 37, Parcels 1&2
2. On April 26, 2019 and May 3, 2019 the Public Hearing Notice was posted in the Sandwich Enterprise.
3. The public hearing was opened on May 14, 2019, continued until May 28, 2019 and further continued until June 25, 2019.
4. The public hearing was closed on May 25, 2019
5. The application was accompanied by a plan dated April, 2019 and further revised June, 2019 and entitled:
ZONING BOARD OF APPEALS
PERMITTING PLAN
0 POCASSET STREET & 0 SHAWME ROAD
C1 LOCUS MAP & C2 SITE LAYOUT PLAN
Prepared for Heritage Museums and Gardens, 67 Grove Street, Sandwich, MA
6. A new plan was submitted June 25, 2019 entitled:
ZONING BOARD OF APPEALS
PERMITTING PLAN
0 POCASSET STREET & 0 SHAWME ROAD
ROPES COURSE REDESIGN
Dated June 19, 2019
7. The Board reviewed the application and all other materials submitted prior to the close of the public hearing. The Board received and gave due consideration to the testimony given at the public hearing.
8. The following members attended the public hearings:

Christopher Neeven
James Killion
Robert Jensen
Erik Van Buskirk*
Timothy O'Neill
Gerry Nye*

*Missed one meeting, but listened to the full audio recording and reviewed all materials in the project file, which allows member to participate in the deliberation of this decision under general law c. 39.

FINDINGS:

The Zoning Board of Appeals makes the following findings with respect to the applicant submissions and testimony at the public hearing:

1. The Board of Appeals finds that this application meets the requirements of Section 9, M.G.L. Chapter 40A.

2. The Board of Appeals finds that the subject property lies within the R-1 zoning district.
3. The Board of Appeals finds that the subject property consists of approximately 34 acres.
4. The Board of Appeals finds that the proposed use intends to operate within the boundaries of the Heritage Museums and Gardens property.
5. The Board of Appeals finds that Heritage Museums and Gardens is a non-profit organization.
6. The Board of Appeals finds that a museum use is by-right in an R-1 Zoning District.
7. The Board of Appeals finds that Heritage Museums and Gardens have operated for 50 years.
8. The Board of Appeals finds that the ropes course had previously operated for four seasons, beginning in 2015 and ending in 2018.
9. The Board of Appeals finds that the ropes course had previously operated as a Dover Amendment protected use.
10. The Board of Appeals finds that in 2018 the Superior Court ruled that the Aerial Adventure Park could not operate as a Dover Amendment protected use.
11. The Board of Appeals finds that the Aerial Adventure Park ceased operations in August 2018.
12. The Board of Appeals finds that the applicant is applying for a Special Permit.
13. The Zoning Board of Appeals makes the following findings with respect to Section 1330 requirements:
 - a) The Board of Appeals does not find that there are conditions peculiar to this case but not generally true for similar permitted uses on other sites in the same district for the following reasons:
 - i. Shawme - Crowell State Forest Camp Ground is an abutting property with a similar use in the same district
 - b) The Board of Appeals finds that nuisance, hazard or congestion will not be created for the following reasons:
 - i. VHB Traffic Study indicated minimal increase in traffic. Reviewed and affirmed by Town Engineer. HMMH provided sound study which concluded there are no sounds audible from the Adventure Park from abutting residences.
 - c) The Board of Appeals finds that there will not be substantial harm to the neighborhood for the following reasons:
 - i. Traffic study concluded there would be a minimal impact to existing traffic conditions.
 - ii. HMMH concluded that noise from the Adventure Park would not impact abutting residences.

- iii. CCI Appraisal Group concluded that no negative property value resulted from the operation of the Adventure Park.
 - d) The Board of Appeals finds that there is no derogation from the intent of the bylaw such that the districts' objectives will not be satisfied for the following reasons:
 - i. There is no derogation from the intent of the bylaw as the use substantially conforms to the R-1 district objectives. The use preserves the current conditions and environment of the community.
 - e) The Board of Appeals finds that the stated R-1 District objectives will be satisfied for the following reasons:
 - i. The use does not cause any harm to the environment or the district's current surroundings.
14. The Board of Appeals finds that the use does not constitute an "Amusement Park" for purposes of the Town's Zoning Bylaw use classifications. The Town's Zoning Bylaw does not specifically define "Amusement Park." In the absence of a definition of "Amusement Park" in the Town's Zoning Bylaw, the Board considered the manner in which Amusement Parks are regulated and licensed under state law. The Massachusetts Department of Public Safety regulates "Amusement Devices" under 520 CMR 5.00, which are defined as "a fixed or portable mechanical device similar to, but not limited to ferris wheels, carousals, rock walls, euro-bungee or similar devices, inclined railways or similar devices, including inflatables, challenge courses, and artificial climbing structures, as well as amusement devices as defined by ASTM." For purposes of state regulation, an "Amusement Park" is "a location that has 35 or more amusement devices that may be operated." Under the Department of Safety regulations, a "challenge course" is a type of amusement device which is "not located in an amusement park or carnival consisting of one or more elements that challenge participants as part of a supervised educational/ recreational curriculum." Although the Board is not bound by state law definitions under 520 CMR 5.00 for purposes of determining the meaning of undefined terms in the Zoning Bylaw, in this instance, the Board considers the proposed ropes course to be akin to a "challenge course," which the State regulates as a single "amusement device," and not as an "amusement park."
15. The Board of Appeals finds that the proposed ropes course fits the Zoning By-Law definition of an "Outdoor Recreation Facility" as a small-scale community recreation and sports fields or facilities allowed by special permit under section 4150 for the following reasons:
- a. **Small Scale:** The Board of Appeals finds that the proposed use qualifies as small scale for the following reasons:

- i. It fits similar uses in the neighborhood and town, such as Shawme-Crowell State Forest Camp Grounds, Beaches, Ball fields, soccer fields. Attendance averages between 150 and 200 visitors per day.
 - ii. The proposed Adventure Park will represent a 20% increase in visitors compared with the Heritage Museum facility.
 - iii. It meets all small scale parameters set forth in section 4150
 - b. **Community:** The Board of Appeals finds that the proposed use can be defined as a community recreation use for the following reasons:
 - i. Discounted rates are offered to local schools, scouts, teachers, first responders and military. As well as 3 free passes a year for neighbors abutting Heritage Gardens.
 - ii. Local businesses have benefitted from the proposed use in the past. Ticket stubs from the ropes course can be used for discounted food at local restaurants.
 - iii. The Planning and Development office are in receipt of numerous letters of support from Sandwich residents, furthering the definition of community for this use.
 - c. **Recreation Facility:** The Board of Appeals finds that the proposed use is a recreation facility for the following reasons:
 - i. The Zoning Bylaw definition of "Recreation Facilities" includes uses such as rock climbing walls, which are commercial in nature, similar in operation and open to the general public
- 16. The Board of Appeals considered the special permit criteria of section 4150 of the Protective Zoning By-Law applicable to an Outdoor Recreation Facility and finds that the following criteria are met:
 - a) No building or other structure related to the outdoor recreation facility shall be constructed or placed on a lot with an area less than 80,000 SF. Such structures shall be single story, shall be compatible with the surrounding neighborhood and shall not exceed 500 SF. In residential districts concession stands located in permanent structures are expressly prohibited. The Board of Appeals finds that this criteria is met for the following reasons:
 - i. Submitted plan details compliance with this requirement.
 - b) Lighting is prohibited for fields and parking areas related to outdoor recreation facilities located in residential districts. In commercial and industrial districts lighting is permitted only between dusk and 10 PM. Where permitted lighting structures shall not exceed the maximum height requirement for the district in which the lot is located as described in Section 2600 of this by-law. The Board of Appeals finds that this criteria is met for the following reasons:

- ii. See attached plan. No lighting proposed.
 - c) Lot coverage by buildings, structures, paving or other impervious surfaces or additions to any buildings, structures, paving or other impervious surfaces shall not exceed twenty percent (20%). The Board of Appeals finds that this criteria is met for the following reasons:
 - iii. Less than 2% lot coverage is proposed.
 - d) Buildings or structures, including any accessory buildings or structures, shall not be located within one hundred (100) feet of any property line. The Board of Appeals finds that this criteria is met for the following reasons:
 - iv. Submitted plan details compliance with the required 100' setback.
 - e) Off street parking shall be provided and shall not be located within one hundred (100) feet of any property boundary line and shall be screened from any public way or private driveway. The Board of Appeals finds that this criteria is met for the following reasons:
 - v. Submitted plan details compliance with this requirement.
 - f) Spectator seats shall not exceed one hundred (100) in number. The Board of Appeals finds that this criteria is met for the following reasons:
 - v. Applicant has demonstrated compliance with this requirement.
17. The Board of Appeals, in its discretion, finds that the proposed outdoor recreation facility is allowed as a second principal use of a nonresidential property and that the lot area on which the proposed ropes course will be located is 1,540,717.2 SF in area, which exceeds by at least 80,000 SF the current minimum lot area for the R-1 district in which the subject parcel is located.
18. The Board of Appeals finds that the elements of the ropes course does meet the definition of a structure under the Protective Zoning By-Law.
19. Applicant demonstrated compliance with 3540 with the installation of evergreen trees to screen the proposed Adventure Park from residential uses.

Motion: I, Robert Jensen, move to adopt these findings as the findings of the Board of Appeals.

Second: James Killion

Vote:	Christopher Neeven	Yes
	James Killion	Yes
	Robert Jensen	Yes
	Erik Van Buskirk	Yes
	Timothy O'Neill	Yes

CONDITIONS of APPROVAL FOR GRANT OF SPECIAL PERMIT:

At the public hearing, the Zoning Board of Appeals considered potential conditions of approval for this special permit. The Zoning Board of Appeals voted that the following conditions of approval shall be imposed upon the special permit approval and that these conditions are reasonable and that the applicant and its successor-in-interest shall be bound by these conditions:

1. Failure to comply with all the conditions set forth in this decision shall terminate the grant of this special permit.
2. Pursuant to the requirements of Sandwich Protective Zoning By-law Section 1330, the grant of special permit shall expire upon:
 - a) Transfer of ownership, prior to initiation of substantial construction on or occupancy of the site unless such transfer is authorized in this permit; or
 - b) If no substantial construction or occupancy takes place within twelve (12) months of special permit approval, excluding such time required to pursue or await the determination of an appeal referred to in MGL C 40A, Section 17.
3. The special permit shall not take effect until it is recorded at the Barnstable County Registry of Deeds and a copy of the recorded special permit is provided to the Planning Office.
4. Lighting is prohibited for fields and parking areas.
5. Concession stands are prohibited; this includes the sale of any beverages or food.
6. The reservation system for the use must remain in place to help manage vehicle activity.
7. There shall be a maximum of 120 climbers at any given time.
8. The season shall be defined as March 1 – November 30.
9. Music shall be prohibited.
10. Hours of operation are as follows: 8am-9:30pm Sun-Sat
11. All parking must be screened from abutters as defined in Section 3540 of the Protective Zoning By-Law.
12. The proposed ropes course must be constructed in accordance with the site plan entitled: Zoning Board of Appeals Permitting Plan 0 Pocasset Street, 0 Shawme Road, Ropes Course Redesign dated 6-19-2019.
13. Any change, extension or alteration may not be implemented without prior approval of the Zoning Board of Appeals.

Motion: I, Robert Jensen, move to impose the above conditions of approval upon any approval of the special permit.

Second: James Killion

Vote:	Christopher Neeven	Yes
	James Killion	Yes
	Robert Jensen	Yes
	Erik Van Buskirk	Yes

Timothy O'Neill

Yes

DECISION

After reviewing the application, the plan and other materials submitted and after giving due consideration to testimony given at the public hearing, the Board hereby approves the special permit application for the purpose of operating a ropes course on property located at 0 Pocasset Road and 0 Shawme Road, Sandwich as shown on Assessor's Map 37, Parcels 1&2.

Motion: I, James Killion, move to approve the Special Permit in consideration of the findings of the Zoning Board of Appeals and subject to the conditions as stated herein.

Second: Robert Jensen

Vote:	Christopher Neeven	Yes
	James Killion	Yes
	Robert Jensen	Yes
	Erik Van Buskirk	Yes
	Timothy O'Neill	Yes